



**SUPREME COURT OF CALIFORNIA  
ORAL ARGUMENT CALENDAR  
SAN FRANCISCO SESSION  
MAY 3, 4, 5, and 6, 2010**

**(FIRST AMENDED)**

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom in the Earl Warren Building, 350 McAllister Street, Fourth Floor, San Francisco, California, on May 3, 4, 5, and 6, 2010.

**MONDAY, MAY 3, 2010—1:30 P.M.**

- (1) S166435 Clayworth v. Pfizer, Inc., et al. (*Kennard, Chin, and Corrigan, JJ., not participating; Ruvolo, Robie, and Miller JJ., assigned justices pro tempore*)
- (2) S175907 People v. Indiana Lumbermens Mutual Ins. Co.
- (3) S015384 People v. Letner (Richard Lacy) and Tobin (Christopher Allan)  
[Automatic Appeal]

**TUESDAY, MAY 4, 2010—9:00 A.M.**

- (4) S152934 Coral Construction, Inc. v. City & Co. of San Francisco et al. (and companion case)
- (5) S173260 In re Molina (Miguel) on Habeas Corpus and S172903 In re Prather (Michael) on Habeas Corpus (*consolidated cases*)
- (6) S167051 People v. Perez (Rodrigo)

**1:30 P.M.**

- (7) S170528 People v. Fontana (Danny Alfred)
- (8) S083904 People v. Verdugo (Nathan James) [Automatic Appeal]
- (9) S029011 People v. Solomon, Jr. (Morris) [Automatic Appeal]

**WEDNESDAY, MAY 5, 2010—9:00 A.M.**

- (10) S174016 Minkler v. Safeco Ins. Co.
- (11) S163681 County of Santa Clara et al. v. Superior Court of Santa Clara Co.  
(Atlantic Richfield Co., et al., Real Parties in Interest) (*Baxter and Corrigan, JJ., not participating; Rivera and Richman, JJ., assigned justices pro tempore*)
- (12) S162647 City of San Jose v. Operating Engineers Local Union No. 3 et al.

**1:30 P.M.**

- (13) S165113 Los Angeles Unified School Dist. v. Great American Ins. Co.
- (14) S170550 Galindo v. Superior Court of Los Angeles Co. (City of Los Angeles Police Dept., Real Parties in Interest)
- (15) S031641 People v. Tate (Gregory O.) [Automatic Appeal]

**THURSDAY, MAY 6, 2010—9:00 A.M.**

- (16) S169195 Kleffman v. Vonage Holdings Corp.
- (17) S165906 Haworth et al. v. Superior Court of Los Angeles Co. (Susan Amy Ossakow, Real Party in Interest)
- (18) S165549 Klein et al. v. United States of America et al.

**1:30 P.M.**

- (19) S171895 People v. Herrera (Honorio Moreno)
- (20) S107508 In re Valdez (Alfredo Reyes) on Habeas Corpus
- (21) S053228 People v. Alexander (Andre) [Automatic Appeal]

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GEORGE  
*Chief Justice*

If exhibits are to be transmitted to this court, counsel must apply to the court for permission. (See Cal. Rules of Court, rule 8.224(c).)

**SUPREME COURT OF CALIFORNIA  
ORAL ARGUMENT CALENDAR  
SAN FRANCISCO SESSION  
MAY 3, 4, 5, and 6, 2010**

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

**MONDAY, MAY 3, 2010—1:30 P.M.**

(1) *Clayworth v. Pfizer, Inc., et al. (Kennard, Chin, and Corrigan, JJ., not participating; Ruvolo, Robie, and Miller, JJ., assigned justices pro tempore), S166435* #08-166 Clayworth v. Pfizer, Inc., et al., S166435. (A116798; 165 Cal.App.4th 209; Superior Court of Alameda County; RG04172428.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) When plaintiffs pay overcharges on goods or services as a result of the anticompetitive conduct of defendant sellers but recover the overcharges through increased prices at which the goods or services are sold to end users, may defendants assert a “pass-on” defense and argue that plaintiffs were not injured because they did not suffer financial loss as a result of the anticompetitive conduct? (2) Is restitution available under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) to plaintiffs who recovered from third persons the overcharges paid to defendants? (3) When plaintiffs recover from third persons the overcharges paid to defendants, have they suffered actual injury and lost money or property for purposes of establishing standing under the Unfair Competition Law, as amended by Proposition 64?

(2) *People v. Indiana Lumbermens Mutual Ins. Co., S175907* #09-66 People v. Indiana Lumbermens Mutual Ins. Co., S175907. (B208691; 175 Cal.App.4th 1426; Superior Court of Los Angeles County; SJ0969.) Petition for review

after the Court of Appeal reversed an order denying a motion to vacate the forfeiture of a bail bond in a criminal case. This case presents the following issue: When a criminal defendant is surrendered into custody or arrested in another county within 180 days of the date of notice that the bail bond has been forfeited, does Penal Code section 1305 require the surety on the bond to file its motion to vacate the forfeiture and exonerate the bond within that period of 180 days in order to obtain relief?

**(3) *People v. Letner (Richard Lacy) and Tobin (Christopher Allan)*, S015384 [Automatic Appeal]**

This matter is an automatic appeal from a judgment of death.

**TUESDAY, MAY 4, 2010—9:00 A.M.**

**(4) *Coral Construction, Inc. v. City & Co. of San Francisco et al. (and companion case)*, S152934**

#07-383 Coral Construction, Inc. v. City & Co. of San Francisco et al. (and companion case), S152934. (A107803; 149 Cal.App.4th 1218; Superior Court of San Francisco County; 421249; 319549.) Petitions for review after the Court of Appeal affirmed in part and reversed in part a summary judgment in a civil action. These cases present the following issues: (1) Did the Court of Appeal properly remand the case to the trial court to determine in the first instance whether the ordinance was required by the federal equal protection clause as a narrowly tailored remedial program to remedy ongoing, pervasive discrimination in public contracting? (2) Does an ordinance that provides certain advantages to minority—and female-owned business enterprises with respect to the award of city contracts fall within an exception to section 31 for actions required of a local government entity to maintain eligibility for federal funds under the federal Civil Rights Act (42 U.S.C. § 2000d)? (3) Does article 1, section 31 of the California Constitution, which prohibits government entities from discrimination or preference on the basis of race, sex, or color in public contracting, improperly disadvantage minority groups and violate equal protection principles by making it more difficult to enact legislation on their behalf? (See *Washington v. Seattle School Dist. No. 1* (1982) 458 U.S. 457; *Hunter v. Erickson* (1969) 393 U.S. 385.)

**(5) *In re Molina (Miguel) on Habeas Corpus, S173260, and In re Prather (Michael) on Habeas Corpus, S172903, (original proceeding) (consolidated cases)***

#09-38 *In re Molina (Miguel) on Habeas Corpus, S173260*, and #09-39 *In re Prather (Michael) on Habeas Corpus, S172903*

Petitions for review after the Court of Appeal affirmed an order granting a petition for writ of habeas corpus (Molina) and granted a petition for writ of habeas corpus (Prather). These cases present the following issues: When a court determines the Board of Parole Hearings abused its discretion in denying parole to an inmate: (1) may it order the board to release the inmate on parole or must it allow the board to redetermine the inmate's parole suitability and afford the Governor the opportunity to exercise his or her independent constitutional right to review parole decisions [Molina]? and (2) may it order the board to find the inmate suitable for parole unless new and different evidence of the inmate's conduct in prison subsequent to the hearing at issue supports a determination that the inmate currently poses an unreasonable risk of danger to society if released on parole [Prather]?

**(6) *People v. Perez (Rodrigo), S167051***

#08-169 *People v. Perez (Rodrigo), S167051*. (B198165; nonpublished opinion; Superior Court of Los Angeles County; BA298659.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Were defendant's convictions for attempted murder of seven police officers and a civilian supported by sufficient evidence when only one shot was fired and only one officer was hit?

**1:30 P.M.**

**(7) *People v. Fontana (Danny Alfred), S170528***

#09-14 *People v. Fontana (Danny Alfred), S170528*. (A117503; nonpublished opinion; Superior Court of San Francisco County; 192597.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issue: Did the Court of Appeal correctly hold (a) that the protections of the

rape shield law (Evid. Code, §§ 782, 1103) did not apply in this case due to defendant's denial that he had sexual intercourse with the victim and (b) that the trial court thus committed reversible error when it excluded evidence that the victim had engaged in consensual sexual intercourse with her boyfriend on the morning of the alleged sexual assault?

**(8) *People v. Verdugo (Nathan James), S083904 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

**(9) *People v. Solomon, Jr. (Morris), S029011 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

**WEDNESDAY, MAY 5, 2010—9:00 A.M.**

**(10) *Minkler v. Safeco Ins. Co., S174016***

#09-41 Minkler v. Safeco Ins. Co., S174016. (9th Cir. No. 07-56689; 561 F.3d 1033; Central District of California; CV-07-04374-MMM.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. As restated by the court, the question presented is: "Where a contract of liability insurance covering multiple insureds contains a severability clause, does an exclusion barring coverage for injuries arising out of the intentional acts of 'an insured' bar coverage for claims that one insured negligently failed to prevent the intentional acts of another insured?"

**(11) *County of Santa Clara et al. v. Superior Court of Santa Clara Co. (Atlantic Richfield Co., et al., Real Parties in Interest) (Baxter and Corrigan, JJ., not participating; Rivera and Richman, JJ., assigned justices pro tempore), S163681***

#08-117 County of Santa Clara et al. v. Superior Court of Santa Clara Co. (Atlantic Richfield Co., et al., Real Parties in Interest), S163681. (H031540; 161 Cal.App.4th 1140; Superior Court of Santa Clara County; CV788657.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: May a public entity retain private counsel to prosecute a public nuisance abatement action under a contingent fee agreement?

(12) ***City of San Jose v. Operating Engineers Local Union No. 3 et al., S162647***

#08-96 City of San Jose v. Operating Engineers Local Union No. 3 et al., S162647.

(H030272; 160 Cal.App.4th 951; Superior Court of Santa Clara County; CV064707.)

Petition for review after the Court of Appeal affirmed a judgment of dismissal of a civil action. This case presents the following issue: Does the Public Employment Relations Board have the exclusive initial jurisdiction to determine whether certain “essential” public employees covered by the Meyers-Milias-Brown Act (Gov. Code, §§ 3500–3511) have the right to strike, or does that jurisdiction rest with the superior court?

**1:30 P.M.**

(13) ***Los Angeles Unified School Dist. v. Great American Ins. Co., S165113***

#08-144 Los Angeles Unified School Dist. v. Great American Ins. Co., S165113.

(B189133; 163 Cal.App.4th 944; Superior Court of Los Angeles County; BC247848.)

Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Must a contractor bringing a contract claim against a public agency based on the theory of breach of implied warranty prove intentional concealment of material facts?

(14) ***Galindo v. Superior Court of Los Angeles Co. (City of Los Angeles Police Dept., Real Parties in Interest), S170550***

#09-10 Galindo v. Superior Court of Los Angeles Co. (City of Los Angeles Police Dept., Real Parties in Interest), S170550. (B208923; 169 Cal.App.4th 1332; Superior Court of Los Angeles County; BA337159.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Does a criminal defendant have a right to obtain *Pitchess* discovery (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531) prior to the preliminary hearing?

(15) ***People v. Tate (Gregory O.), S031641 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

**THURSDAY, MAY 6, 2010—9:00 A.M.**

**(16) *Kleffman v. Vonage Holdings Corp.*, S169195**

#09-03 Kleffman v. Vonage Holdings Corp., S169195. (9th Cir. Nos. 07-56171, 07-56292; 551 F.3d 847; Central District of California; CV-07-02406-GAF.) Request under California Rules of Court, rule 8.548, that this court decide question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: “Does sending unsolicited commercial e-mail advertisements from multiple domain names for the purpose of bypassing spam filters constitute falsified, misrepresented, or forged header information under Business and Professions Code section 17529.5, subdivision (a)(2)?”

**(17) *Haworth et al. v. Superior Court of Los Angeles Co. (Susan Amy Ossakow, Real Party in Interest)*, S165906**

#08-143 Haworth et al. v. Superior Court of Los Angeles Co. (Susan Amy Ossakow, Real Party in Interest), S165906. (B204534; 164 Cal.App.4th 930; Superior Court of Los Angeles County; SC082441.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issues: (1) What is the scope of a neutral arbitrator’s required disclosures under Code of Civil Procedure section 1281.9? (2) What is the proper standard of review of an order vacating an arbitration award based on an arbitrator’s purported failure to disclose grounds for disqualification?

**(18) *Klein et al. v. United States of America et al.*, S165549**

#08-152 Klein et al. v. United States of America et al., S165549. (9th Cir. No. 06-55510; 537 F.3d 1027; Central District of California; CV-05-05526-PA.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: “Does Civil Code section 846, California’s recreational land use statute, immunize a landowner from liability for acts of vehicular negligence committed by the landowner’s employee in the course and scope of his employment that cause personal injury to a recreational user of that land?”



**(19) *People v. Herrera (Honorio Moreno)*, S171895**

#09-26 *People v. Herrera (Honorio Moreno)*, S171895. (G039028; nonpublished opinion; Superior Court of Orange County; 05CF3817.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issue: Did the trial court err in determining that a prosecution witness, who had been deported and could not be extradited to the United States, was unavailable within the meaning of Evidence Code section 240, or was the prosecution required to show further due diligence to establish the unavailability of the witness before introducing the witness's prior testimony from the preliminary hearing?

**(20) *In re Valdez (Alfredo Reyes) on Habeas Corpus*, S107508**

#04-129 *In re Valdez (Alfredo Reyes) on Habeas Corpus*, S107508. Original proceeding. In this case, which is related to the automatic appeal in *People v. Valdez* (2004) 32 Cal.4th 73, the court issued an order to show cause limited to the following issues: Is petitioner entitled to relief on the claim that trial counsel provided ineffective assistance at the guilt and penalty phases of his trial based upon counsel's failure (1) to introduce a laboratory report or to question an investigating officer about the results of any testing done on a pair of trousers, (2) to make an adequate offer of proof and cite relevant authority with respect to third party culpability evidence, (3) to have petitioner examined by a mental health professional, or (4) to ask the trial court to reconsider the admissibility of third party culpability evidence at the penalty phase?

**(21) *People v. Alexander (Andre)*, S053228 [Automatic Appeal]**

This matter is an automatic appeal from a judgment of death.